

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of J.D. HAWTHORNE, JR. and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Houston, Tex.

*Docket No. 97-1608; Submitted on the Record;
Issued April 13, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he was totally disabled from work commencing April 5, 1995 due to his accepted April 4, 1995 recurrence.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he was totally disabled from work commencing April 5, 1995 due to his accepted April 4, 1995 recurrence.

On May 30, 1986 appellant, then a supply clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 14, 1986 he injured the left side of his back while lifting equipment from a cart. The Office of Workers' Compensation Programs accepted appellant's claim for a lumbosacral strain. The Office also authorized a laminectomy which was performed on May 31, 1986. Appellant returned to limited-duty work in the position of information receptionist on December 12, 1994.

By decision dated March 2, 1995, the Office found that the limited-duty position of information receptionist fairly and reasonably represented appellant's wage-earning capacity.

On June 16, 1995 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability on April 4, 1995. Appellant stopped work on April 5, 1995.¹

By decision dated August 2, 1995 the Office found the evidence of record insufficient to establish that the claimed medical condition or disability was causally related to appellant's April 14, 1986 employment injury. In an August 21, 1995 letter, appellant requested an oral hearing before an Office representative.

¹ Appellant was removed from the employing establishment effective April 11, 1995 because he falsified his application for employment.

By decision dated August 22, 1996, a hearing representative set aside the Office's August 2, 1995 decision and remanded the case to the Office for further development.

On remand the Office accepted that appellant's current symptoms were causally related to his April 14, 1986 employment injury in a February 27, 1997 decision. The Office, however, found the evidence of record insufficient to establish that appellant was totally disabled from work beginning April 5, 1995. Accordingly, the Office denied appellant's claim for wage-loss compensation beginning April 5, 1995.

It is appellant's burden of proof to establish that an injury was sustained in the performance of duty as alleged and that any disability for which compensation is claimed is causally related to the employment injury.² To be of probative value, medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history of the employee whose claim is being considered.³

In this case, appellant has not submitted sufficient rationalized medical evidence establishing that he was totally disabled for work commencing April 5, 1995 due to his accepted April 4, 1995 recurrence. In support of his claim, appellant submitted supplemental attending physician's reports (Form CA-20a) of Dr. Frank L. Barnes, a Board-certified orthopedic surgeon and appellant's treating physician, dated April 11, 20 and 25, and May 23, 1995 indicating that he had a lumbar strain and that he was to remain off work. Appellant also submitted Dr. Barnes' April 24, 1995 medical report revealing that he was seen on April 10, 1995 and was kept from work for one week at that time. Dr. Barnes indicated his findings on physical examination and medical treatment. He recommended that appellant not return to work for at least another two weeks. In addition, appellant submitted Dr. Barnes' undated attending physician's report (Form CA-20) indicating that he had a lumbar disc displacement and that he was disabled from work during the period April 5 through June 14, 1995. Dr. Barnes' reports are insufficient to establish appellant's burden inasmuch as he failed to explain how or why appellant's total disability from work was caused by the accepted recurrence.

The record reveals the June 7, 1995 medical report of Dr. Jose E. Rodriguez, a Board-certified orthopedic surgeon, indicating a history of appellant's medical treatment. Dr. Rodriguez provided his findings on physical and objective examination, and opined that appellant had lumbar radicular syndrome in a previously operated lumbar spine with definite symptom magnification and cervical pain that was probably subjective. He stated that all these pains were chronic by history. Dr. Rodriguez recommended that appellant undergo a behavior medicine evaluation, magnetic resonance imaging (MRI) and a bone scan of the lumbar spine. Dr. Barnes' August 28, 1995 medical report provided his findings on physical examination, and recommendations that appellant see Dr. Rodriguez regarding his spine and undergo a psychological examination. In an August 30, 1995 medical report, Dr. Rodriguez noted his findings on physical examination. Dr. Rodriguez stated that he was unable to objectively complete an assessment of appellant because the MRI, bone scan and psychological evaluation

² *Godfrey L. Smith*, 44 ECAB 738 (1993); *Robert J. Krysten*, 44 ECAB 227 (1992).

³ *See George E. Williams*, 44 ECAB 530 (1993); *Connie Johns*, 44 ECAB 560 (1993).

he recommended had not been performed. He then recommended that appellant undergo an electromyogram (EMG) of the lower extremities. In his November 29, 1995 and February 12, 1996 medical reports, Dr. Barnes provided his findings on physical examination and medical treatment. The medical reports of Drs. Rodriguez and Barnes are insufficient to establish appellant's burden inasmuch as they failed to address whether appellant was totally disabled from work beginning April 5, 1995 due to his accepted recurrence.

In a February 21, 1996 medical report, Dr. Rodriguez indicated the MRI, bone scan and EMG findings. Based on appellant's ongoing symptoms which correlated with the test results, Dr. Rodriguez recommended surgery. Dr. Rodriguez stated that prior to the surgery he wanted appellant to undergo an evaluation for behavior medicine to especially rule out depression. He concluded that appellant was unemployable and probably disabled for heavy work. Dr. Rodriguez failed to explain how or why appellant was unemployable.

In medical reports dated June 3, August 28 and December 4 1996, and February 10, 1997, Dr. Barnes indicated his findings on physical examination and appellant's medical treatment. Dr. Barnes' medical reports did not address whether appellant was totally disabled from work due to his accepted recurrence.

In response to the Office's October 10, 1996 letter advising him to submit the MRI, EMG and bone scan reports, and to clarify his opinion regarding the extent of appellant's disability from performing the work duties of an information receptionist, Dr. Rodriguez submitted an October 18, 1996 letter. In this letter, Dr. Rodriguez stated that MRI, EMG and bone scans were unnecessary because appellant was in need of behavior medicine treatments. Dr. Rodriguez opined that appellant was probably physical capable of performing the duties of an information receptionist, but that from a psychological standpoint, appellant was not ready to deal with people. Dr. Rodriguez stated that appellant's motivation and behavior were poor due to his severe depression. Dr. Rodriguez' report is insufficient to establish appellant's burden because he failed to explain how and why appellant's disability was caused by his emotional condition. Further, the Office has not accepted appellant's claim for an emotional condition.

In an undated medical report, Dr. Mohsen Mirabi, a Board-certified psychiatrist and second opinion physician, revealed appellant's family and medical histories, a review of medical records, and his findings on mental examination. Dr. Mirabi diagnosed dysthymic disorder which at times may have reached to major depressive disorder during the spring of 1995. Dr. Mirabi opined that appellant's psychiatric condition could be the result of his chronic back pain as any chronic condition could be accompanied with some degree of despondency. Dr. Mirabi further opined that other factors such as, psycho-social, social-economical and interpersonal conflict may have also contributed to appellant's condition. In addition, Dr. Mirabi opined that appellant's "psychiatric condition does not seem to have been related nor could have prevented him from continuing the position of information receptionist in April 1995." In an accompanying work capacity evaluation for psychiatric/psychological conditions dated January 20, 1997, Dr. Mirabi indicated appellant's work restrictions.

Dr. Mirabi's medical report constitutes the weight of the medical evidence of record inasmuch as it is rationalized and based on an accurate factual and medical background. Because Dr. Mirabi's medical report constitutes the weight of the medical evidence and appellant has not

submitted the necessary rationalized medical evidence to establish that he was totally disabled from work commencing April 5, 1995 due to his accepted April 4, 1995 recurrence, the Board finds that appellant has failed to meet his burden of proof in this case.

The February 27, 1997 and August 22, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
April 13, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member